



P.O. Box 216 Klamath Falls, Oregon 97601

January 27, 2012

Nancy H Sutley, Chair  
Council on Environmental Quality  
The White House  
722 Jackson Place, NW  
Washington, D.C. 20503

**Re: New CEQ National Environmental Policy Act Guidance**

Dear Chairwoman Sutley:

The Family Farm Alliance appreciates the opportunity to comment on the Council on Environmental Quality's (CEQ) Draft Guidance on promoting efficient environmental reviews, released December 7, 2011. Thank you for your proactive efforts to review and find ways of improving the implementation of the National Environmental Protection Act (NEPA).

In general, we concur with the proposed guidance CEQ has developed for existing aspects of NEPA that are intended to encourage efficiencies that can be applied when preparing a NEPA environmental review. However, there appears to be nothing in the guidance that is likely to have any impact on how federal agencies actually approach their NEPA responsibilities. The proposed guidance, in our view, really does not do much to change the status quo.

Given the fact that every federal agency has developed specific NEPA guidelines, policies, and most importantly, people, the Alliance believes a meaningful shift toward efficiency and coordination in approach would be welcomed. However, it is difficult for us to see how this proposed guidance will make that happen.

**Family Farm Alliance Background**

The Family Farm Alliance is a grassroots organization of family farmers, ranchers, irrigation districts and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. The Alliance believes that without developing new sources of water, increasing urban and environmental demands in a changing climate will deplete existing agricultural supplies and seriously threaten the future of Western irrigated agriculture, and thus the Nation's domestic food supply. The often slow and cumbersome federal regulatory process has become a major obstacle to the realization of projects and actions that could enhance Western water supplies. NEPA implementation, in particular, can have a direct bearing on the success or failure of

critical water supply enhancement projects. Further, our members include many Western water managers, who often use NEPA mechanisms like Categorical Exclusions (CEs), Environmental Assessments (EAs) and Findings of No Significant Impact (FONSI) in conjunction with annual operations and maintenance activities on ditches or major rehabilitation and repair projects on existing dams.

### **Recent CEQ Efforts to Address NEPA**

As described in the guidance, CEQ has been working with agencies to modernize and reinvigorate NEPA implementation in several ways. CEQ issued guidance on the development and use of CEs in November 2010. Properly developed and applied, CE's provide federal agencies with an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource-intensive EAs or Environmental Impact Statements (EISs). The use of CEs can reduce paperwork and delay for proposed actions that do not raise the potential for significant environmental effects. In January 2011, CEQ provided guidance that specifically addressed the appropriate use of a FONSI to conclude the NEPA review process relying on an EA.

In his 2011 State of the Union Address, and again in August 2011, President Obama called for further steps to enhance the efficient and effective permitting and environmental review of infrastructure development “through such strategies as integrating planning and environmental reviews; coordinating multi-agency or multi-governmental reviews and approvals to run concurrently; setting clear schedules for completing steps in the environmental review and permitting process; and utilizing information technologies to inform the public about the progress of environmental reviews as well as the progress of Federal permitting and review processes.” The December 7, 2012 guidance intends to set forth straightforward ways by which the CEQ Regulations, properly understood and applied, can support these strategies.

### **Past Alliance Efforts to Engage in Efforts to Modernize NEPA**

For the past seven years, the Alliance has engaged in several forums with the intent of providing constructive recommendations to streamline federal environmental laws – most of them signed into law over 30 years ago. We have conducted surveys of Western farmers and water managers throughout the West and asked them to identify the regulatory impediments they most frequently encounter as they seek to construct projects that protect and enhance water supplies. NEPA “horror” stories were abundant; some of those impediments related to NEPA implementation will be described later in this letter.

In 2005, Alliance representatives participated in hearings conducted by the Congressionally-directed NEPA Task Force. We used that forum to provide recommendations to streamline NEPA regulations as they relate to new water supply and conservation projects. We worked closely with Congress as the NEPA Task Force was developed, and generally supported its findings and recommendations. In assessing the Task Force report, we compared it to the

problems identified by the Alliance's survey and to our initial recommendations we presented to the Task Force. Of course, our focus was more specifically directed at how the Task Force recommendations would contribute to a more streamlined regulatory process for water supply infrastructure projects.

During our review, we learned from our members that federal agencies need to do a better and more consistent job of defining and characterizing cumulative impacts. As it currently stands, the characterization used by agencies to define cumulative impact is many times unreasonably subjective, sometimes leading to superfluous challenges to the NEPA process that can delay the process and increase costs.

Our members encourage eliminating redundant environmental review processes. They believe that actions subject to NEPA should only have to proceed through the environmental review process once. For example, if NEPA is completed on a water resources infrastructure project by one agency (e.g., the Bureau of Reclamation) then a second process should not be imposed by another agency on the same project (e.g., the Corps of Engineers when they consider an individual Clean Water Act Section 404 permit).

One key observation noted by our members in our survey was that the alternatives proposed for assessment by federal NEPA regulators are frequently inappropriate, unrealistic, difficult-to-implement, and often in conflict with state law. The NEPA Task Force offered several recommendations that addressed this concern, including support to create unambiguous criteria for the use of CEs, EAs, and EISs. It was our hope that these criteria, once clarified, would encourage policymakers to also address the confusion that currently exists relative to what exactly constitutes a "significant" impact.

Our members felt that the definition of "significant impact to the human environment" needed to be clarified to minimize confusion and eliminate the varying interpretations between federal agencies and their local and regional staff. We continue to believe that proper implementation of this recommendation has the potential to enhance federal agency NEPA engagement and reduce future litigation costs associated with the NEPA process.

More recently, CEQ has issued several rounds of new guidance that, in some instances, would appear to nullify the recent federal efforts to make the NEPA process more efficient, especially for those routine activities or projects that pose minimal threats to the environment. In May 2010, we transmitted a comment letter to CEQ which outlined our concerns over the more visible negative ramifications associated with the CE guidance proposed at that time. We also noted our concerns associated with the more subtle implications associated new FONSI guidance.

### **Summary of Principles Described in Draft Guidance**

The December 7, 2011 draft guidance outlines the following principles for agencies to follow when performing NEPA environmental reviews:

- ☞ NEPA encourages simple, straightforward, and concise reviews and documentation;
- ☞ NEPA should be integrated into project planning rather than be conducted after planning is complete;
- ☞ NEPA reviews should coordinate and take appropriate advantage of existing documents and studies;
- ☞ NEPA reviews should use early and well-defined scoping to target environmental reviews to appropriate issues and avoid unnecessary work;
- ☞ Agencies should develop meaningful and expeditious timelines for environmental reviews; and
- ☞ Agencies should target their responses to comments to appropriate issues raised.

Importantly, as noted in the draft guidance, the principles simply provides CEQ's interpretation of existing regulations promulgated under NEPA, and does not change agencies' obligations with regard to NEPA and the CEQ Regulations.

### **General Concern with Draft Guidance**

We cannot argue with the overall philosophy embedded in the above principles. However, it is difficult to see how the proposed guidance will actually change the status quo. There appears to be nothing in the guidance that is likely to have any impact on how agencies approach their NEPA responsibilities. We believe a more direct linkage to “pilot” NEPA efforts could give stakeholders a way to track successes and showcase innovations in implementing these principles, but short of clearly identified and coordinated efforts that include benchmarks and outcomes, these principles may or may not be heeded. Other concerns are further outlined below.

### **Concerns Regarding Public Involvement**

The guidance makes it clear that scoping—a technique to identify the relevant review issues and eliminate unnecessary work—can and should be used for all types of environmental reviews. It is the responsibility of the lead agency for implementing NEPA to communicate its commitments to the public. It should be noted that mitigation and environmental commitments made during the NEPA process are in fact public, as they are incorporated into the environmental review document and the decision document, be that a FONSI or Record of Decision. This confirms our position: no separate process is needed to inform the public.

### **Use of Categorical Exclusions**

A “categorical exclusion” describes a category of actions that do not typically result in individual or cumulative significant environmental effects or impacts. When appropriately established and applied, categorical exclusions serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive Environmental Assessments or Environmental Impact Statements. Applying

for a new categorical exclusion, for example, can potentially ease the Federal Energy Regulatory Commission permitting requirements for irrigators who want to install small hydroelectric projects in existing canals and ditches. These projects have minimal environmental impacts and offer over 50,000 opportunities in the U.S. to create new, clean, renewable sources of energy.

### Importance of CEs and Questioning the Need to Limit Their Use

CEs are an efficient means of getting “shovel-ready” projects moving forward and putting people to work in our struggling U.S. economy. In its February 2010 report to Congress, CEQ highlighted the fact that, of more than 166,700 NEPA reviews, over 161,000 have been completed and the rest are underway. Of those, recent NEPA reviews have found that roughly 154,000 of the projects or activities came under CEs because they did not have significant individual or cumulative effects on the human environment.

Unfortunately, there are activist groups who use NEPA to delay and/or block efforts of some Western water users to perform the most routine (yet essential) actions. The draft guidance appears to place additional emphasis on public involvement in federal decision-making – which we fear will open up the decisions made in applying even existing CEs to public scrutiny and provide more opportunities for litigation launched by obstructionists. These same activist groups appear to be leading the charge for a more restrictive NEPA implementation approach.

The latest guidance does nothing to sway us from our concerns expressed in May 2010, where earlier proposed guidance seemed to reflect this position, and assume that major reforms are needed to correct perceived misapplication of existing CEs. We have a different perspective. While there is room for progress in streamlining CE documentation, the use of CEs is clearly a critically important tool for advancing projects that have no significant impacts. We believe that the newly proposed CEQ NEPA guidance could severely limit the viability of this important tool, since the perception within federal agencies may be that existing CE implementation is flawed, which could contribute to uncertainty and reluctance about the use of CEs. The result will be increased costs and a greater delay in a project development process that already takes too long.

We encourage the continued use of CEs to streamline the NEPA process. In general, we urge CEQ to focus on ways to expedite the NEPA process, not add on layers of new requirements, including using an expanded public review process. We especially recommend that CEQ encourage the broader application of CEs for projects with no significant effects, rather than attempting to further restrict their use and application.

### **The Health of Rural Communities Depends on Less Regulation, Not More**

From the standpoint of the Western American farmer, it can be bewildering, daunting and frustrating to understand the impacts of this guidance in the context of the vast specter of other new rules, regulations, and guidance that are currently under development by federal regulatory

agencies. Unfortunately, the very real impacts that existing laws and regulations exert on agricultural producers have already been felt, and those requirements do not appear to be going away any time soon. Admittedly, it is simple enough to document these efforts to the best of our abilities and register our complaints. While it is much more difficult to propose constructive solutions that can make existing laws work better, the Family Farm Alliance prides itself in employing this very philosophy. The Alliance and many other organizations representing American producers have developed detailed recommendations over the past decade on how the negative effects of existing environmental regulations can be corrected and improved. We would be happy to provide a compilation of those efforts and make them available to CEQ.

Our farmers and ranchers are increasingly subjected to duplicative and expensive federal regulations and their related uncertainty of increased costs, lost critical farm inputs, and reduced water supplies, making it harder to survive in today's harsh economy. And forcing farmers out of business and taking farmland out of production so that water supplies can be redirected to new environmental demands will impart huge limitations on our future ability to feed our country and the world.

With the right combination of tools and incentives – the latter, in part, in the form of modernized, streamlined regulations - as well as both public and private sector investments in water management infrastructure for the future, Western irrigated agriculture will be poised to help close the global agricultural productivity gap and sustainably meet this Nation's and the world's food and fiber needs in 2050 and beyond.

## **Conclusion**

Thank you for this opportunity to provide input on this new guidance, which is very important to the family farmers and ranchers of our membership. We are hopeful that a concerted good-faith effort working with CEQ will result in a streamlined regulatory process that will be efficient, fair and effective. We look forward to working with you toward that goal.

If you have any questions about this letter, I encourage you or your staff to contact me at (541) 892-6244.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Keppen', with a stylized flourish at the end.

Dan Keppen  
Executive Director